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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,481

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Martin Bunce

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EXAMINER

YOUNG, RACHEL T

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

09/07/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,481

Applicant(s)

BUNCE, MARTIN

Examiner

RACHEL YOUNG

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-4, 6-7 and 9-13 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-4, 6, 7 and 9-13 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Amendment

1. This office action is responsive to the amendment filed on 6/23/11. As directed by the amendment: claims 1-4 and 6-7 have been amended, claims 5 and 8 have been canceled, and new claims 9-13 have been added. Thus, claims 1-4, 6-7 and 9-13 are presently pending in the application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6-7, 9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollet et al. (2004/0089292) in view of Dehaven (6,003,205).

Regarding claim 1, in fig. 5a Pollet discloses an inhaler for dispensing doses of medicament from a container under user activation (Page 2, para 28, ll. 11-13, Page 1, para 3) and the inhaler includes a body 3 including a mouthpiece 7 and a cap 9 which can be placed in a position to substantially occlude the mouthpiece (fig. 5a) and the cap is attached to the body by an integrally moulded strap (10, Page 3, para 49, ll. 4-6, Page 2, para 32) which pivots from the body, the body having a base having contours and the strap underlies the body and substantially following the contours of the base (fig. 5a),

Art Unit: 3771

and the cap must translate away from the mouthpiece prior to the pivoting of the strap (fig. 5a-5c). Pollet is silent regarding that when placed in the position to substantially occlude the mouthpiece, the cap can slide on the strap and the cap has a lug preventing removal of the cap from the strap. However, in figures 1 and 3 Dehaven teaches a cap 22 with lug 25 that slides on a strap 16 preventing removal of the cap from the strap when the cap is furthest from 12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pollet's cap and strap with a cap that slides on a strap with a lug, as taught by Dehaven, for the purpose of providing easy sliding and adjustment of the cap.

Regarding claims 2-3, in fig. 3 and 6 Pollet discloses that the mouthpiece 7 projects from the body 3 and that the cap both occludes the mouthpiece and overlies a part of the projection of the mouthpiece (fig. 5a).

Regarding claim 4, Pollet discloses that the inhaler is a plastic material (Page 2, para 31)

Regarding claims 6-7, Pollet discloses that the container is pressurized (Page 2, para 28, ll. 11-13, Page 1, para 3), and that the inhaler is a metered dose inhaler (Page 2, para 28, ll. 11-13, Page 1, para 3).

Regarding claim 9, the modified Pollet discloses that the inhaler stands upright and unsupported when the base (5 Pollet) is placed on a support surface (fig. 1 shows a flat base), such that when the inhaler is standing upright, the strap, by substantially following the contours of the base, is located between the base and the support surface

(when the modified cap is placed on the mouthpiece the strap is as in fig. 1 of Dehaven).

Regarding claim 11, the modified Pollet discloses that the length of the strap allows movement of the cap such that the cap, when in the position to substantially occlude the mouthpiece, is permitted to translate away from the mouthpiece to allow the pivoting of the strap (the modified Pollet's cap when occluded is in position as in fig. 1 of Dehaven and upon removal the cap slides along the strap key hole slot 19 of Dehaven, which allows for pivoting as in fig. 5c of Pollet).

Regarding claim 12, the modified Pollet discloses that the strap pivots (fig. 5c Pollet) and is elastic (Page 3, para 42) and thus can be stretched and pivoted to abut the rear of the body.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pollet/Dehaven, as applied to claims 1 and 9 above, and in further view of Van Iderstine (6,164,275).

Regarding claim 10, the modified Pollet discloses that the strap substantially follows the contours of the base, but is silent regarding that the strap has an indentation for following the contours of the base. However, in fig. 3-4 Van Iderstine teaches a strap (rear portion of 11) connected to a cap 27 having an indentation following the contours of the base of the inhaler. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Pollet's strap with an indentation, as taught by Van Iderstine, for the purpose of providing a better fit for the cap.

5. Claims 1 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollet et al. (2004/0089292) in view of Kelley et al. (5,564,583).

Regarding claim 1, in fig. 5a Pollet discloses an inhaler for dispensing doses of medicament from a container under user activation (Page 2, para 28, ll. 11-13, Page 1, para 3) and the inhaler includes a body 3 including a mouthpiece 7 and a cap 9 which can be placed in a position to substantially occlude the mouthpiece (fig. 5a) and the cap is attached to the body by an integrally moulded strap (10, Page 3, para 49, ll. 4-6, Page 2, para 32) which pivots from the body, the body having a base having contours and the strap underlies the body and substantially following the contours of the base (fig. 5a), and the cap must translate away from the mouthpiece prior to the pivoting of the strap (fig. 5a-5c). Pollet is silent regarding that when placed in the position to substantially occlude the mouthpiece, the cap can slide on the strap and the cap has a lug preventing removal of the cap from the strap. However, in figures 1 and 2 Kelley teaches a cap 38 with lugs (46, 48) that slides on a strap 50 preventing removal of the cap from the strap when the cap. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pollet's strap with a strap attached on both sides of the body and a cap with two lugs, as taught by Kelley, for the purpose of providing easy sliding, removal of the cap and carrying of the cap.

Regarding claim 13, the modified Pollet discloses that the cap includes an opening (56, 58 Kelley) for receiving the strap as the cap translates towards the mouthpiece.

Response to Arguments

6. Applicant's arguments with respect to claims 1-4, 6-7 and 9-13 have been considered but are moot in view of the new grounds of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL YOUNG whose telephone number is (571)270-1481. The examiner can normally be reached on mon-thurs 7 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RACHEL T YOUNG/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771